DOCUMENT RESUME

ED 476 572 UD 035 665

TITLE	Campaign for Fiscal Equity, Inc., et al., Plaintiffs-Appellants, against the State of New York, et al., Defendants-Resondents. Brief Amicus Curiae of the Council of the Great City Schools.
INSTITUTION	New York State Unified Court System, Albany.
REPORT NO	Index-No-11070-93
PUB DATE	2003-02-04
NOTE	48p.
PUB TYPE	Legal/Legislative/Regulatory Materials (090)
EDRS PRICE	EDRS Price MF01/PC02 Plus Postage.
DESCRIPTORS	*Academic Standards; Court Litigation ; Disadvantaged Youth; *Educational Finance; Elementary Secondary Education; *Equal Education; Financial Support; Minority Group Children; Public Schools; *Urban Schools
IDENTIFIERS	*Council of Great City Schools; *New York (New York)

ABSTRACT

The Council of the Great City Schools, a national organization representing the needs of urban public schools, has studied school finance in four member districts, including New York. The Councils interest in current litigation over school financing began when Council data were used in evidence to support the defendants in the case brought by the Campaign for Fiscal Equity against the State of New York. In its briefing to the Appellate Division of the Supreme Court, the State of New York defendants described the Council's data inaccurately in an effort to support the proposition that New York City students outperform students in other urban districts, including those with less disadvantaged student populations. This Amicus Brief is intended to set the record straight, providing the Court with information from its own analysis of state funding of the New York City Public Schools. The first section suggests that the Appellate Division's standard for a "sound basic education" makes a mockery of the New York Constitution's education clause (the presence of poor, minority, and immigrant students in New York City does not justify setting low standards for a sound basic education, and the Appellate Division's other efforts to rationalize the present system are equally unconvincing). The second section asserts that a meaningful standard for a sound basic education should be stated by the court. The brief concludes that New York State should have the opportunity to consider information on the real cost of providing necessary educational programs, services, and facilities, then adopt a system of funding public education that provides all students with the education they need. (SM)

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New York County Clerk's Index No. 111070/93

Court of Appeals
of the
State of New York

CAMPAIGN FOR FISCAL EQUITY, INC., AMINISHA BLACK, KUZALIAWA BLACK, INNOCENCIA BERGES-TAVERAS, BIENVENNIDO TAVERAS, TANIA TAVERAS, JOANNE DEJESUS, ERYCKA DEJESUS, ROBERT JACKSON, SUMAYA JACKSON, ASMANHAN JACKSON, HEATHER LEWIS, ALINA LEWIS, SHAYNA LEWIS, JOSHUA LEWIS, LILLIAN PAIGE, SHERRON PAIGE, COURTNEY PAIGE, VERNICE STEVENS, RICHARD WASHINGTON, MARIA VEGA, JIMMY VEGA, DOROTHY YOUNG, and BLAKE YOUNG,

Plaintiffs-Appellants,

-against-

THE STATE OF NEW YORK, GEORGE E. PATAKI, as Governor of the State of New York, and MICHAEL H. URBACH, as Tax Commissioner of the State of New York,

Defendants-Respondents.

BRIEF AMICUS CURIAE OF THE COUNCIL OF THE GREAT CITY SCHOOLS

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February 4, 2003

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INTEREST OF AMICUS

The Council of the Great City Schools ("Council") is the only national organization representing the needs of America's urban public schools. The Council is a coalition of nearly 60 of the nation's largest urban public school systems, incorporated in 1961 for the purpose of improving the quality of urban education through research, legislation, technical assistance and advocacy. The school districts of Rochester, Buffalo, and New York City comprise the Council's membership in New York State. Other large school districts that are members of the Council include Chicago, Los Angeles, Detroit, Miami-Dade, and Houston.

The Council collects data on public education and publishes regular reports designed to assist its members and the larger education community in understanding issues and best practices in urban education today. The topics of recent Council reports have ranged from the progress of urban school districts in closing achievement gaps to efforts to recruit highly qualified teachers.

The Council has a strong interest in supporting efforts to adequately fund the education of millions of children enrolled in America's urban public schools. Toward that end, the Council has prepared major studies of school finance in four of its member districts, including New York, and assisted other Council members in data analysis of finance issues.

The Council's interest in this litigation is not generalized or abstract. Council data were received in evidence by the trial court in Defendants' Exhibits 10176 and 10190. In its briefing to the Appellate Division of the Supreme Court,

the State of New York defendants described the Council's data inaccurately in an effort to support the proposition that New York City students outperform students in other urban districts, including those with less disadvantaged student populations. The Council submits this Amicus Brief to set the record straight, to provide the Court with information from its own analysis of State funding of the New York City Public Schools, *Adequate State Financing of Urban Schools: An Analysis of State Funding of the New York City Public Schools* (January 2000), and to share with the Court a national perspective on the issues that the Court faces on this appeal.

BACKGROUND

Article XI, § 1 of the New York Constitution requires that "[t]he legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated." Most striking about this provision is that it requires a "system." The word "system" connotes a deliberate, careful mechanism designed to meet the goal of educating all children of the State of New York. It is the Constitution itself that mandates that the system be designed for *all* children. It does not suffice that the system of school finance provides an adequate education for some children, in some districts, some of the time, or even most children, in most districts, most of the time. The plain language of the Constitution requires that the system be designed to educate *all* children, not just those who happen to be in intact families that speak English at home or have private libraries.

When this Court first considered whether plaintiffs had stated a claim in this case, it held that the Education Article imposes an enforceable duty on the Legislature to ensure the availability of a "sound basic education" to all the children of the State. *Campaign for Fiscal Equity, Inc. v. State of New York*, 86 N.Y.2d 307, 315, 631 N.Y.S.2d 565, 569 (1995), citing *Board of Education, Levittown Union Free School Dist. v. Nyquist*, 57 N.Y.2d 27, 48 (1982). A duty exists on the part of the State to provide "a constitutional floor with respect to educational adequacy"; this Court has the responsibility for adjudicating the nature of that duty. *Campaign for Fiscal Equity, Inc.*, 86 N.Y.2d at 315, 631 N.Y.S.2d at 569.

This Court further ruled that this standard is not an historic artifact frozen in 1894 when the Education Clause was adopted. Instead, the Court ruled that the standard is more organic and that it must equip students for the basic responsibilities of citizenship in the twenty-first century: "Such an education should consist of the basic literacy, calculating, and verbal skills necessary to enable children to eventually function productively as civic participants capable of voting and serving on a jury." *Id.* at 316, 631 N.Y.S.2d at 570. Even before an evidentiary record was developed, this Court recognized that

> [c]hildren are entitled to minimally adequate physical facilities and classrooms which provide enough light, space, heat, and air to permit children to learn. Children should have access to minimally adequate instrumentalities of learning such as desks, chairs, pencils, and reasonably current textbooks. Children are also entitled to minimally adequate teaching of reasonably up-to-date curricula such as reading, writing, mathematics, science, and social studies, by sufficient personnel adequately trained to teach those subject areas.

Id. at 317, 631 N.Y.S.2d at 570.

On remand, after 111 court days of trial, during which the parties presented the testimony of 72 witnesses and over 4300 exhibits, Supreme Court Justice Leland DeGrasse defined and explained the standard that this Court sketched out in template form in 1995. The Supreme Court held that the skills necessary for productive civic engagement require more than just being of sufficient age, for example, and capability of appearing at the polls or for jury service. Meaningful participation as a voter or juror, Justice DeGrasse concluded, requires competencies such as the ability to read and understand ballot initiatives, to understand evidence, and to engage in deliberations based on jury instructions in a complex civil or criminal case. *Campaign for Fiscal Equity v. State of New York*, 187 Misc. 2d 1, 719 N.Y.S.2d 475 (Sup. Ct. New York County 2001). Those tasks require the ability to read, understand, and discourse upon complex ideas. Justice DeGrasse further observed that public education always has been understood to serve the purpose of preparing students for productive work. "The Court of Appeals' emphasis on productive citizenship connotes an education that contributes to society's economic needs as well as high school graduates'." 187 Misc. 2d at 16, 719 N.Y.S.2d at 486. Graduates must be equipped for some "competitive employment," not just dead-end minimum wage jobs, before it can be said that they have received a sound basic education. *Id.* at 17-18, 719 N.Y.S.2d at 487.

Justice DeGrasse's exhaustive opinion detailed the deficiencies in the system of education and its funding in New York and how the system prevents all New York City students from obtaining a sound basic education:

- Too many New York City teachers are "ill-trained and inexperienced . . . to meet the difficult challenges presented in the New York City public schools." 187 Misc.2d at 25, 719 N.Y.S.2d at 492. Uncertified teachers tend to be concentrated in low-performing schools, characterized by poor physical facilities, large class sizes, and located in high-crime neighborhoods. *Id.* at 27, 719 N.Y.S.2d at 493.
- The result is poorer instruction and the "failure to assure the delivery of core curricula . . .." *Id.* at 37, 719 N.Y.S.2d at 500.
- The poor quality of New York City's public school facilities presents a "bleak picture" on issues the Court identified specifically in 1995 as relevant to a sound basic education: insufficient light, heat and air to permit children to learn, as well as collapsing facades, rusted structural beams and falling masonry. *Id.* at 39-45, 719 N.Y.S.2d at 501-05. Overcrowding and nonexistent or inadequate science labs and wiring that cannot support computer systems make many school facilities inappropriate for modern instruction. *Id.* at 45, 719 N.Y.S.2d at 505-06.
- These deplorable conditions contribute to low student achievement, as does the "severe" overcrowding in the system. *Id.* at 46-49, 719 N.Y.S.2d at 506-08. Class sizes, linked to student achievement, consistently are higher than the State average in New York City public schools. *Id.* at 51-56, 719 N.Y.S.2d at 509-12. The positive effect of smaller class sizes, Justice DeGrasse found, is especially beneficial for students living in poverty. *Id.*

- "[A]t least since the early 1980's New York City has endured a chronic shortage of adequate textbooks." *Id.* at 57, 719 N.Y.S.2d at 513.
- School library books are "inadequate in number and quality," lagging behind the rest of the State due to inadequate funding allocations. *Id.*
- Instructional technology is a core instrumentality of learning, given the "omnipresence" of computers in society and the workplace, and their importance in such civic processes as voter participation. *Id.* at 58, 719 N.Y.S.2d at 514. The New York City Public Schools "have failed to provide adequate instructional technology to their students." *Id.*

Justice DeGrasse recognized that test results should be viewed cautiously because many factors influence student performance, *id.* at 60, 719 N.Y.S.2d at 515, but the litany of measures of student performance on which New York City public school students are outperformed by others in the State, and by other relevant comparison groups, is simply overwhelming. Most telling, almost a third of the students who enter ninth grade do not graduate by the time they are 21. *Id.* Of those who do complete high school, about 10% receive a GED ("general equivalency degree") with standards so low that they do not assure that the student has received a sound, basic education. *Id.* at 61, 719 N.Y.S.2d at 515. The majority of students who graduate receive a "local diploma," which measures skills at the sixth to ninth grade level. *Id.* at 61, 719 N.Y.S.2d at 516. Tens of thousands of New York City public school students perform below the levels that the State itself recognizes as minimally sufficient on state tests. *Id.* at 65, 719 N.Y.S.2d at 518.

The Supreme Court did not assume a causal link between insufficient resources and the poor outcomes achieved by New York City public school students, but instead made careful findings linking those facts. *Id.* at 68-82, 719 N.Y.S.2d at 520-29. Finally, Justice DeGrasse found that fault rested with the State funding "system" itself, which is "complex," "opaque," and "malleab[le] in practice," *id.* at 83, 719 N.Y.S.2d at 529-30, to agreements by State political leaders:

> It is well known that the formulas are annually "worked backwards" until the politically negotiated "share" for the City schools is hit in the calculations. In this context, the data feeding into the school aid formulas for New York City is really of no practical consequence whatsoever -- the City will get the negotiated share of aid regardless of what data they report.

Id. at 88, 719 N.Y.S.2d at 533. Given this process, it is not surprising that "the State's school funding mechanism has failed for more than a decade to align funding with need[,] and thus has failed to provide a sound basic education to New York City's school children." *Id.* at 83, 719 N.Y.S.2d at 530.

The Supreme Court further found that defendants violated regulations implementing the Civil Rights Act of 1964, which are enforceable under 42 U.S.C. § 1983. Section 1983 prohibits a State from depriving any person of the rights, privileges, or immunities secured by the Constitution and laws of the United States. The crux of defendants' violation is funding the New York City Public Schools -- which are overwhelmingly minority in enrollment and educate the vast majority of the minority students in New York State -- at a lower per-capita level than it funds the rest of the State's students, who are majority white. *Id.* at 102, 719 N.Y.S.2d at 542.

The State defendants appealed.

The Appellate Division reversed, directed that a declaration be made that the State of New York's educational funding system does not contravene the constitution's Education Article, and dismissed plaintiffs' claim under the Title VI implementing regulations and 42 U.S.C. § 1983. *Campaign for Fiscal Equity, Inc. v. The State of New York*, 295 A.D.2d 1, 744 N.Y.S.2d 130 (First Dep't 2002).

ARGUMENT

A. The Appellate Division's Standard for a "Sound Basic Education" Makes a Mockery of the New York Constitution's Education Clause.

Upon reviewing a selective part of the evidence at trial, the Appellate Division concluded "that the skills required to enable a person to obtain employment, vote, and serve on a jury, are imparted between grades 8 and 9. . . ." *Id.* at 8, 719 N.Y.S.2d at 138. The Appellate Division accordingly professed itself content that the State system meets the sound basic education requirement of the Constitution because, it said, the parties did not dispute that this eighth or ninth grade level of skills is being provided. *Id.* Aside from the fact that the record casts grave doubt on whether even this level of proficiency is attained by tens of thousands of dropouts, including those with limited English proficiency or special education needs, this Court must reject a constitutional standard that would permit the State to cut off funding of public education at the end of grade nine for students who are performing on grade level. The ninth-grade standard cannot be acceptable in the twenty-first century.

The Appellate Division's standard does not meet the mandate that this Court set in 1995. There is no realistic hope that a system designed to educate students to the eighth or ninth grade level would produce well-informed participants in civic life and employees prepared for a highly competitive workforce. Civic participation on the complex issues presented in election campaigns and on ballot initiatives requires solid reading comprehension and speech skills well beyond those contemplated by the Appellate Division. A higher level of proficiency in civics and history is necessary as well if the next generation is to participate actively in our democracy. President George W. Bush recently explained the link between the study of history and civics, for example, and the effective participation of Americans in their government:

> Our Founders believed the study of history and citizenship should be at the core of every American's education. Yet today, our children have large and disturbing gaps in their knowledge of history. . . . Ignorance of American history and civics weakens our sense of citizenship. To be an American is not just a matter of blood or birth; we are bound by ideals, and our children must know those ideals. They should know about the nearly impossible victory of the Revolutionary War, and the debates of the Constitutional Convention. They should know the meaning of the Declaration of Independence, and how Abraham Lincoln applied its principles to fight slavery. Our children should know why Martin Luther King, Jr., was in a Birmingham city jail, and why he wrote a magnificent letter from that place. Our children need to know about America's liberation of Europe during World War II, and why the Berlin Wall came down. At this very moment, Americans are fighting in foreign lands for principles defined at our founding, and every American -- particularly every American child -- should fully understand these principles.[1]

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[1] President George W. Bush, Introducing History and Civic Education Initiatives (9/17/02), *available at* www.whitehouse.gov/news/releases/2002/09/20020917-1.html.

Understanding this history, not likely to be fully achieved by ninth grade, enables us as a people to avoid the mistakes of the past and to improve the future. It is inexcusable for a State required to support a system to educate all children to adopt a standard allowing them to vote and participate as citizens and enter the workforce with only an eighth-grade knowledge of this country's history and government and the principles that undergird them.

1. The Presence of Poor, Minority and Immigrant Students in New York City Does Not Justify Setting a Low Standard for a Sound Basic Education.

Perhaps the most disturbing aspect of the Appellate Division's minimalist standard for a sound basic education is the link that the Court itself draws to the fact that many New York City Public School students are poor, minority, recent immigrants, or have some combination of those characteristics. The Court concludes that the "City students' lower test results in comparison with the rest of the state are largely the result of demographic factors, such as poverty, high crime neighborhoods, single parent or dysfunctional homes, homes where English is not spoken, or homes where parents offer little help with homework and motivation." *Id.* at 16, 744 N.Y.S.2d at 144. The New York Constitution does not, however, mandate a system that will educate all students except those who are poor, cannot speak English, have a drug addicted parent unable to help with homework, or move every couple of months to stay ahead of the landlord. The constitutional mandate extends to "all children." The Council of Great City Schools strongly supports the Plaintiffs-Appellants' position that the Constitution must ensure the

opportunity for all students to obtain an adequate high school education. Any lower standard for New York City perpetuates the stereotype that poor, minority and immigrant children cannot learn to high levels.

It is surprising that the State of New York advocates in its litigation that it is constitutionally acceptable for New York City to achieve the results one would expect based on the poverty and other challenges faced by its students. The State should not accept a State education and finance system that accepts this notion, and thus perpetuates poverty. The job of public education is to help children overcome and transcend these and other barriers. New York State leaders and education officials have stated in other contexts for many years that *all* children can learn and achieve at high levels.[2] Indeed, the stated mission of the New York State Education Department is: "All students will meet or exceed high learning standards at the elementary, middle, secondary and continuing education levels."[3]

The evidence at trial amply demonstrated why many such children do not excel in the New York City Public Schools. New York City students, especially poor students, are not provided the quality teachers, decent facilities, up-to-date materials, reasonable class sizes, and other tools that they need just to attain the basics. Students in other school districts in the State of New York generally perform at higher levels and are educated in systems with greater resources. The

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[2] For example, Goal 1 in the Strategic Plan of the New York State Board of Regents is: "All students will meet high standards for academic performance and personal behavior and demonstrate the knowledge and skills required by a dynamic world." www.oms.nysed.gov/strategy/stratplan2000.htm.

[3] www.emsc.nysed.gov.

overwhelming numbers of New York public school students who do not even come close to finishing high school, or who finish with a minimal credential and dramatically below-grade-level performance, demonstrate a systemic failure of constitutional dimensions.

The Council of the Great City Schools urges this Court to face head-on the Appellate Division's low expectations for poor, minority and limited English proficient students. Commentators and the education community have condemned the notion that the State of New York can be blameless because the students who get only an eighth grade education are largely poor and minority.[4] This Court should reject the Appellate Division's standard explicitly, and state that the New York Constitution really means what it says when it protects "all children."

In order to make such a constitutional protection an enforceable reality, this Court should make clear that a sound basic education must be defined in terms of the children actually enrolled in the public schools. If a child appears at the door of a New York City Public School for the first time as an eight-year-old and does not speak English or read and write in any language, the "system" must provide that

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[4] *See, e.g.*, J. Yinger, *Court Leaves Thousands of Kids Behind*, Albany Times-Union, Aug. 6, 2002, available at http://www.cfequity.org/June%2025%20Decision%20Coverage/8-7-02timesunion.htm; R. Johnson, *Court Rulings Imperil Schools and Workforce*,Newsday, July 17, 2002; available at http://www.cfequity.org/June%2025%20Decision%20Coverage/07-17-02Newday.htm; D. Jones, *New York Court Finds 8th Grade Education Enough for Children of Color*, The New York Amsterdam News, July 11-17, 2002, available at http://www.cfequity.org/June%2025%20Decision%20Coverage/7-11-02CSSJones.htm; Poughkeepsie Journal Editorial, *Court's Ruling Hurts Schools*, June 28, 2002, available at http://www.cfequity.org/June%2025%20Decision%20Coverage/06-28-02poughkeepsieed.htm.

child an "education," which this Court says means a sound basic education. There simply is no basis in law for the Appellate Division to decide that the State can be excused from its constitutional obligation because the student must make greater strides before he can show proficiency on written tests. The materials and teachers sufficient to provide an opportunity for a sound basic education to an affluent, English-speaking eight-year-old with no disability or special education need likely will be far different from the materials and teachers needed to meet that same standard for the child with no English and no literacy skills. It is obvious that if the system puts English language, third grade materials in front of the non-English-speaking child, presented by a teacher who has no preparation in teaching English as a second language, it is not providing him with a sound basic education. Justice Saxe, in dissent from the Appellate Division's decision, recognized that the constitutional question can not be answered by assuming that education is being provided "to a theoretical student body consisting only of privileged children." *Campaign for Fiscal Equity,* 295 A.D.2d at 28, 744 N.Y.S.2d at 154. An "expanded platform" of programs that allows students to spend more "time on task," with competent teachers receiving ongoing professional development, can succeed in enabling at-risk students to seize the opportunity for a sound basic education, Justice Saxe concluded based on the extensive evidence at trial. *Campaign for Fiscal Equity,* 295 A.D.2d at 32, 744 N.Y.S.2d at 155.

The evidence at trial overwhelmingly showed, on a much larger scale, that far from being calibrated to provide what students require to attain a sound

basic education, the New York State education system promotes conditions in New York City that create barriers to learning for the majority of students. Thousands of teachers are uncertified, inexperienced and insufficiently trained; classrooms are crowded; the school day is short; buildings lack labs and computers; library books are old and scarce; and textbooks are out of date. These conditions are worst in the neighborhoods and schools where poverty is the highest. This is also where student performance is at its lowest. Justice DeGrasse's findings establish the causal link between the substandard "inputs" and the unacceptable "outputs."

Simply leaving behind and blaming the children who cannot attain proficiency under these adverse conditions should not be an option allowed by the New York Constitution. It is certainly not allowed under federal law. The *No Child Left Behind Act of 2001* requires that all students in the nation attain academic proficiency in reading, math and science. New York State has been vigorous in its support for *No Child Left Behind*, but has not backed up its strict insistence on high academic standards with the resources to permit New York City students to meet those standards. The Appellate Division is driven to stating an absurdly low standard for a sound basic education because there is no other way to defend a finance system that has almost nothing to do with what children need in a classroom in order to succeed at the standards actually imposed by the State of New York in settings other than this litigation. The refusal by State officials to link

what students need with what those supports actually cost results in a "system" that fails to educate "all children."

2. The Appellate Division's Other Efforts to Rationalize the Present System Are Equally Unconvincing.

a. The Appellate Division's Concept of "Opportunity" Makes Unwarranted Assumptions About the Supposed Unwillingness of Poor and Minority Students to Learn. A crucial flaw in the Appellate Division's analysis was its reliance on the concept of "opportunity" to escape holding state officials accountable for the failure of tens of thousands of New York City schoolchildren. 295 A.D.2d at 15, 744 N.Y.S.2d at 143. The Appellate Division simply assumes that the "opportunity" for a sound basic education exists in New York City, but that other unstated factors within the control of the students must cause tens of thousands of children to leave the City Schools each year without gaining minimum mastery of basic subject matter. There was no evidence at trial that students in poverty are unmotivated or unconcerned about education. A new national study by the Minority Student Achievement Network,[5] in fact, shows that Black and Hispanic students have as much desire to succeed in school as their white and Asian peers. The record holds abundant reasons, however, that could propel a capable student to leave school or to perform at low levels. A student required to sit

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[5] Ed-Excel Assessment of Secondary School Student Culture Tabulations by School District and Race/Ethnicity, available at www.msanetwork.org/pub/edexcel.pdf. The students in this study attend suburban schools. The study was designed to identify differences between racial groups in attitudes toward school and exposure to negative peer pressure. Students responded in very similar ways, regardless of race, district size, or region.

in a crowded classroom with a leaky roof and little heat, and to read outdated materials taught by an inexperienced teacher, could readily decide to give up on school because the system had so fully given up on him.

In other settings, State Education officials acknowledge the link between low resources and low student performance. *See* Memorandum from James A. Kadamus to The Honorable the Members of the State Board of Regents, July 3, 2001 at 1 ("[t]here is a strong correlation between the need/resource capacity of districts and the ability of their schools to perform at State standards").[6] When the State itself examined the characteristics of schools throughout the State placed in registration review, which are schools requiring State intervention because of low performance, the State found that 79% of such schools had "insufficient supplies and materials," 75% had "many uncertified teachers," and 71% had "many inexperienced teachers." *Id.* at 5. It is hardly surprising that 88% had "ineffective instructional methods" and 79% had "inadequate planning." *Id.* Among the steps that the State has found successful in these schools is the use of financial incentives to attract certified teachers. *Id.* at 6.

Richard Mills, the Commissioner of Education, moreover, asserts a clear link between resources and performance in the preface of the State Department's 2002 report to the governor and the legislature:

> The more advantaged districts spend over $3,000 more per student and pay their teachers $20,000 more annually. Students in more advantaged districts are substantially more likely than students in less advantaged districts to perform

[6] Available at www.emsc.nysed.gov/nyc/PDFs/brd6.pdf.

> with distinction on Regents examinations, and they are more than twice as likely to plan to attend four-year colleges.
>
> State aid formulas help to ensure that those districts with the least ability to raise resources locally, on average, receive the largest allocations of aid from the State. However, with few exceptions, the formulas do not consider the extra help in achieving the standards needed by children placed at risk by poverty and limited English proficiency. [7]

It is, of course, true that the New York Constitution requires that children be given the opportunity for a sound basic education, not that test scores reach any certain levels. The Appellate Division simply jumped to the conclusion, however, that low performance reflects a decision students make not to achieve despite the opportunity provided. The Appellate Division's lack of citation to any evidence betrays its assumption.

b. The State Inaccurately Used Council Data to Support the Conclusion that Achievement in New York City Is Not a Problem. The Appellate Division also tried to rationalize the condition of public education in New York City by convincing itself that the outcomes are not really as dire as portrayed by the plaintiffs. It misunderstood the evidence, however, when it found that "from 1996 to 1999, for grades three through eight, it was demonstrated that City public school children scored at or close to the national average." 295 A.D.2d at 15, 744 N.Y.S.2d at 143. The Appellate Division cited no record references for this

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[7] The University of the State of New York and the State Education Department, *New York: The State of Learning, A Report to the Governor and the Legislature on the Educational Status of the State's Schools* (June 2002) at vii (preface quoted is signed by Robert M. Bennett, Chancellor, Board of Regents, and Richard P. Mills, President of the University of the State of New York and Commissioner of Education).

proposition. The State in its brief to the Appellate Division, however, had relied in part on Council data in Defendants' Exhibits 10176 and 10190 to support the proposition that New York City children outperformed children from other large urban districts even though such other districts had fewer disadvantaged students. Brief for Defendants-Appellants at 82 (New York County Index No. 111070/93) (filed Aug. 13, 2001). The State's citation grossly misrepresents the Council data.

The State did not call a witness from the Council to explain the data, so the record reflects assumptions and speculation about what the data represent. Defendants' Exhibit 10176 apparently was drawn from the Council's 1994 Report, *National Urban Education Goals: 1992-93 Indicators Report*.[8] This study presented statistics reported by the organization's members on student achievement, dropout and graduation rates, early childhood program participation, expenditures per pupil, and other variables of interest to the public. Testimony at trial concerning the exhibit speculated that the test score information from the report was not parallel and therefore could not be appropriately compared.[9] The New York City test score information in the Council's 1994 Report, in fact, did not include all of the

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[8] Assuming that the content of Defendants' Exhibit 10176 was drawn from the Council's 1994 Report, it contains two other small errors. The source of the Chicago number apparently is the Council's 1994 Report and not *Education Week*. Second, the Baltimore number should be 35.6%, not 35.1%.

[9] *See, e.g.*, Tr. 10524-26 (testimony of Robert Tobias) ("I know that they were not comparable. . . . [t]here were a variety of policies as to which students were tested . . . concerning testing English-language learners . . . special education students; and all of these differences really render those data not comparable").

categories of special education, vocational, Limited English Proficient, and other non-general track students that other Council members included.[10]

The 1994 Report states clearly that student achievement in one city could not be compared with confidence to student achievement in another city. The Report makes this point a number of times:

> In general, we attempted to mute the problem of aggregating disparate dropout data by presenting rates in intervals, and the achievement data by disaggregating results by grade span, race, and sex. We are still left with dropout and achievement data which were non-comparable across the individual city-by-city profiles.
>
> * * *
>
> Achievement data presented in this report have a number of flaws, most of them unsolvable given the present technology. As is commonly known, standardized norm-referenced achievement tests come in great variety, and are often given for disparate reasons, to differing age groups and grades, and with differing norms.
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> * * *
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> Achievement data also may not be comparable in all cases. The reader will find that different tests are used in each

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[10] Of course, any evidence of student achievement in New York City as compared to the other five urban districts listed in Defendants' Exhibit 10176 would have to take account of the pending cases in four of those states challenging the legality of funding levels in those districts. *See, e.g., Powell v. Ridge*, 189 F.3d 387 (3d Cir.), *cert. denied*, 528 U.S. 1046 (1999) (Philadelphia); *Williams v. State*, No. 312236 (Super. Ct. San Francisco Cty.) (schools in California including Los Angeles); *Honore v. Fla. State Bd. of Educ.*, Case No. CV-0-17 (Leon Cty. Cir. Ct.) (Florida including Dade County); *Bradford v. Md. State Bd. of Educ.*, Case No. 95258055/CL20251 (Cir. Ct. Baltimore City) (Baltimore).

> system, and that they are often given in different grades to various types and numbers of students.[11]

There is, in fact, an entire chapter, "Data Limitations and Future Indicators," which is devoted to cautioning readers of the report against comparing one city with another. These cautionary notes were apparently ignored by the State and the Appellate Division.

The State's arguments are undermined by more recent studies by the Council, *Beating the Odds* (May 2001) and *Beating the Odds II: A City-by-City Analysis of Student Performance and Achievement Gaps on State Assessments* (June 2002). Both studies present compelling data using the State's own tests that show that the New York City public schools score well below statewide averages in reading and math at the fourth and eighth grade levels. The city's academic performance, instead, is shown to be more consistent with that of public school students in Buffalo and Rochester.

The Council's study of school funding in New York City, *Adequate State Financing of Urban Schools: An Analysis of State Funding of the New York City Public Schools* ("Council's New York Study") (January 2000), moreover, showed that student poverty in the New York City Public Schools is fairly similar to other large urban systems around the country. Council's New York Study at 8. The findings of the Council's New York Study are based on statistical analysis of three data sets from independent sources: the Educational Research Service, the State of

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[11] National Urban Education Goals: 1992-93 Indicators Report (1994), at 113, 115, 137.

New York, and the United States Department of Education. The Council's statistical analyses compared expenditures in the New York City public schools with others using a variety of methods. The most important findings of the Council's New York Study support the plaintiffs' claim:

- The study examined five different measures of student achievement (fourth grade reading, award of Regents' diplomas, SAT, ACT, and City-wide math and reading tests). The analysis compared student performance in New York City with that of students statewide and across the nation. New York City students scored far below their peers across the State, below national averages and norms, and in a range similar to other large cities in New York State. The study concluded "that students in New York City are not performing at levels reached by others throughout the State or nation. Generally, the city's students perform at levels that are somewhat below the State and national norms at the elementary school level, but score well below others in the State and nationwide at the secondary level. It is also apparent that far fewer of the city's high school graduates leave with a State Regents diploma than the average graduate statewide. Finally, many New York City high school graduates who aspire to attend college do not have scores high

enough to gain admission to a competitive postsecondary institution." Council's New York Study at 19;

- The amount of money invested in the education of children in New York had a positive impact on how well they achieved. The analysis showed that the average child in New York State could expect to have some $25,975 more spent on his or her education between birth and high school graduation than the average child in New York City. This was the equivalent of between two and three extra years of schooling for the average child statewide compared with the average child in New York City schools. These disparities accumulated over time and were found to be statistically correlated to fourth grade reading scores statewide. Council's New York Study at 38-39;
- New York City received far less State funding than was commensurate with the proportion of poor children in the State that the city educates. In 1995-96, New York City received about 54% of the State aid one would expect if State aid were allocated on the basis of student poverty. Council's New York Study at 8;
- The State of New York compensated predominantly white school districts for their proportions of poor students better than it did predominantly minority districts for their poverty. The

statistical analysis showed that, for 1997-98, the State could be expected to spend $2,278 less per pupil on school districts with enrollments of at least 50% minority than on other districts in the state with comparable poverty rates. Council's New York Study at 41-42;

- In 1995-96, New York City, Buffalo, Rochester and Syracuse educated 41% of the State's public school children, 73% of the State's students in poverty, and 78% of the State's minority students, yet received only about 34% of the State's Fiscal Year 1994 expenditures for K-12 education. Council's New York Study at 9;
- New York City schools spent the same percentage of their resources on instruction as the average school system in New York State and as other large school systems across the Nation. The Council's analysis also showed that the city spent approximately the same proportion of its resources on instruction (66%) as the highest performing 10% of school districts in the state (67%), i.e., districts that came closest to meeting state-established academic standards. Council's New York Study at 21-29; and
- The New York City Public Schools would need $12,537 per pupil to have the resources equivalent to the highest *achieving* school

districts in the state—without adjusting for any differences in student needs.[12] Council's New York Study at 46.

All of these conclusions support Justice DeGrasse's findings. In particular, they demonstrate that the race of students enrolled is related to the allocation of funding to school districts in New York State. This is another example of the Appellate Division ignoring the evidence and simply assuming that all New York State students attend schools on a level playing field. The Council agrees with the views presented to this Court in the Amicus Brief of the New York Civil Liberties Union that a cause of action can be based on the regulations implementing Title VI of the Civil Rights Act of 1964, and that the proof in this cases establishes that claim.

c. The Appellate Division Incorrectly Assumed that Hundreds of Millions of Dollars Can Be Shifted from Special Education. The Appellate Division also labored under the misimpression that the New York City schools over-identify thousands of students as needing special education services and could save hundreds of millions of dollars by reclassifying them into regular education and reallocating the savings for other educational purposes. 295 A.D.2d at 17, 744 N.Y.S.2d at 144-45. The proportion of New York City Public School children in special education is very similar, however, to national and to

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[12] New York City would need $16,608 per student if figures were adjusted for student needs. The adjustments include a multiplier from the base cost of 1.2 for low-income students, 2.3 for disabled students and 1.1 for limited English proficient students. *Id.*

New York State averages.[13] Some 13.6% of the students enrolled in the New York City Public Schools are also enrolled in special education, compared with 13.5% statewide.[14] The similarity of these rates does not suggest the potential for reclassifying unusually large numbers of New York City's students unless the State is also suggesting the need for a massive reclassification statewide.

According to the State Education Department, increases in special education rates over the last few years are largely the result of state, federal, and judicial actions, not local school district policies. The State Department's report to the legislature and governor indicates that:

> Three factors explain most of the increases in special education enrollments. First, in the early 1980s, consistent with federal requirements, New York State law expanded the categories of disabilities to include learning disabilities, autism, multiply [*sic*] disabled, orthopedic conditions, and health impairments, making more children eligible to receive special education services. Second, the 1979 federal court decision *Jose P. v. Ambach* resulted in more appropriate program placements for children with disabilities in New York City. Third, in 1980 the State altered the method used to allocate State aid for educating children with disabilities, replacing the kind of disability with the intensity of services provided as a factor in distributing aid. This change resulted

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[13] Council's New York Study at 9, 10 (New York City is similar to national and urban averages in its proportion of students in special education, but noting that "urban schools tend to enroll students with more severe and costly disabilities, while suburbs often have greater percentages of students with lower-cost learning disabilities or attention deficit disorders").

[14] The University of the State of New York and the State Education Department, *New York: The State of Learning, A Report to the Governor and the Legislature on the Educational Status of the State's Schools* (June 2002) at 14 and 109.

> in a significant increase in the total State funds provided for special education.[15]

It may be the case that some New York City students could be reclassified if they all were re-evaluated to determine anew if they are disabled, but the process of re-assessing the individual needs of approximately 143,000 New York City students in special education would itself cost many millions of dollars and months of effort.

Moreover, the New York City Public Schools cannot simply reassign special education students unilaterally. Under the federal Individuals with Disabilities Education Act ("IDEA"), each child in special education was so placed based on an individual initial evaluation to determine whether he or she is disabled, and to identify the child's educational needs. 42 U.S.C. § 1414(a)(1). A school team then developed for each disabled child an individualized educational program ("IEP") that states the child's present level of educational performance, measurable annual goals, the special education aids and services that will be provided to the child, and a statement of how progress will be measured. 42 U.S.C. § 1414(d). Parents are part of the team that develops the IEP. The team is to review and revise the IEP periodically; the school district cannot simply pull a child out of a special education program. 42 U.S.C. § 1414(f). Parents have an opportunity to seek mediation and appeal on a wide range of issues relating to the identification, evaluation or placement of their child. 42 U.S.C. § 1415(e), (f).

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[15] *Id.* at 17-18.

Finally, children with disabilities, however classified, require specialized services that are not available in scores of New York City public schools that are crowded, crumbling, and feature large numbers of inexperienced and uncertified teachers. For disabled students, the appropriate setting is a highly individual issue. It cannot be assumed that a regular classroom is always superior to a special education classroom for a disabled student. *E.g., Beth B. v. Van Clay*, 282 F.3d 493 (7th Cir.), *cert. denied*, 123 S. Ct. 412 (Oct. 15, 2002) (upholding school district recommendation to move disabled student from regular classroom to special education classroom). Even if some special education students could learn with less intensive services, and if those less intensive services were widely provided throughout the school system, not all of the parents will necessarily concur. It is highly speculative that appreciable savings would result at any time in the near future through the Appellate Division's massive proposed effort to re-evaluate every special education student.

d. The State's Opportunity to Devise Other Solutions to the Problem of Poverty Should Not Undermine Its Constitutional Obligation. Finally, the Appellate Division cites Dr. David Grissmer's testimony that investing money "in the family" rather than in the schools "might pay off even more." 295 A.D.2d at 16, 744 N.Y.S.2d at 144. It is, of course, open to the State of New York to provide families in poverty with job programs or other benefits to overcome poverty, which likely will reduce the cost and effort involved in educating their children. The State of New York can provide English literacy classes for new immigrants and

parenting classes for all families in poverty, which could reduce the cost and effort of providing children a sound basic education. But to the extent that existing State programs fall short in reducing poverty and building English literacy in the population generally, the State should not be able to escape the investment in a sound basic education designed to bring poor, disabled, and English language learner students to a level of competence that will permit them to participate in civic affairs and find meaningful employment.

B. A Meaningful Standard for a Sound Basic Education Can and Should Be Stated by This Court.

1. Other State Courts Have Expressed Meaningful Standards

Other states considering the adequacy of systems of school finance generally have not spelled out the standard in terms of grade levels, as the Appellate Division attempted here. Instead, they have phrased the State's obligations in terms of what a contemporary public education must equip students to know and do, and have required educators and State officials responsible for public education to develop the means of implementing those standards, including an appropriate funding system. The efforts of those States are instructive. Although the other State constitutional provisions are not necessarily the same as New York's, the cases demonstrate that a State high court can indeed articulate an enforceable standard that provides students a meaningful opportunity to support themselves, go on to college, and become productive citizens.

Over 20 years ago, Courts in West Virginia and Washington began the articulation of meaningful standards in interpreting their state constitutions'

education clauses. In *Pauley v. Kelly*, 255 S.E.2d 859, 877 (W. Va. 1979), the West Virginia Supreme Court defined a "thorough and efficient system of schools" as one that "develops, as best the state of education expertise allows, the minds, bodies and social morality of its charges to prepare them for useful and happy occupations, recreation and citizenship."

> Legally recognized elements in this definition are development in every child to his or her capacity of (1) literacy; (2) ability to add, subtract, multiply and divide numbers; (3) knowledge of government to the extent that the child will be equipped as a citizen to make informed choices among persons and issues that affect his own governance; (4) self-knowledge and knowledge of his or her total environment to allow the child to intelligently choose life work to know his or her options; (5) work-training and advanced academic training as the child may intelligently choose; (6) recreational pursuits; (7) interests in all creative arts, such as music, theatre, literature, and the visual arts; (8) social ethics, both behavioral and abstract, to facilitate compatibility with others in this society.

Id.

In *Seattle School District No. 1 v. State*, 585 P.2d 71, 94 (Wash. 1978), the Washington Supreme Court held that "the State's constitutional duty [to make ample provision for the basic education of all resident children] goes beyond mere reading, writing and arithmetic. It also embraces broad educational opportunities needed in the contemporary setting to equip our children for their role as citizens and as potential competitors in today's market as well as in the market place of ideas." The Court further stated that "[t]he constitutional right to have the State 'make ample provision for the education of all (resident) children' would be hollow

indeed if the possessor of the right could not compete adequately in our open political system, in the labor market, or in the market place of ideas." *Id.* at 94-95.

The Kentucky Supreme Court, in a landmark case stating the importance and enforceability of the Kentucky Constitution's requirement that the legislature "provide an efficient system of common schools throughout the state," articulated the elements of such a system:

> [A]n efficient system of education must have as its goal to provide each and every child with at least the seven following capacities: (i) sufficient oral and written communication skills to enable students to function in a complex and rapidly changing civilization; (ii) sufficient knowledge of economic, social, and political systems to enable the student to make informed choices; (iii) sufficient understanding of governmental processes to enable the student to understand the issues that affect his or her community, state, and nation; (iv) sufficient self-knowledge and knowledge of his or her mental and physical wellness; (v) sufficient grounding in the arts to enable each student to appreciate his or her cultural and historical heritage; (vi) sufficient training or preparation for advanced training in either academic or vocational fields so as to enable each child to choose and pursue life work intelligently; and (vii) sufficient levels of academic or vocational skills to enable public school students to compete favorably with their counterparts in surrounding states, in academics or in the job market.

Rose v. Council for Better Education, 790 S.W.2d 186, 212 (Ky. 1989). The Court in *Rose* emphasized that "these seven characteristics should be considered as *minimum* goals in providing an adequate education." *Id.* (emphasis in original).

The Kentucky goals have been widely cited by other state high courts. The Massachusetts Supreme Judicial Court, in *McDuffy v. Secretary of the Executive Office of Education*, 615 N.E.2d 516, 555 (Mass. 1993), stated that Kentucky's guidelines "accord with our Constitution's emphasis on educating our

children to become free citizens on whom the Commonwealth may rely to meet its needs and to further its interests." In *Claremont School District v. Governor*, 703 A.2d 1353, 1359 (N.H. 1997), the New Hampshire Supreme Court also adopted Kentucky's guidelines in describing the constitutional "duty of the legislators . . . to cherish . . . public schools," because "[m]ere competence in the basics -- reading, writing, and arithmetic -- is insufficient in the waning days of the twentieth century to insure that this State's public school students are fully integrated into the world around them. A broad exposure to the social, economic, scientific, technological, and political realities of today's society is essential for our students to compete, contribute, and flourish in the twenty-first century." Very recently, the Supreme Court of Arkansas looked to the standards articulated in *Rose* as it rejected the defendants' arguments that educational adequacy presents a non-justiciable issue and cannot be defined. *Lake View School Dist. No. 25 of Phillips County v. Huckabee*, 2002 WL 31618995 at 8 (Ark. Nov. 21, 2002). The Arkansas Court noted that many of the same goals named in *Rose* had been endorsed in education legislation by the Arkansas General Assembly. *Id.* at 9.

Other courts also have set their constitutional minimum requirement at a level that reflects much more rigor and content than the Appellate Division's standard. *E.g., Abbeville County School Dist. #1 v. State of South Carolina*, 515 S.E.2d 535, 540 (S.C. 1999) ("[w]e define this minimally adequate education required by our Constitution to include providing students adequate and safe facilities in which they have the opportunity to acquire: 1) the ability to read, write,

and speak the English language, and knowledge of mathematics and physical science; 2) a fundamental knowledge of economic, social, and political systems, and of history and governmental processes; and 3) academic and vocational skills").

Other state high courts also have made very clear, contrary to the reasoning of the Appellate Division, that at-risk students are entitled to the same constitutional protection as other students. To the extent that the needs of students in poverty are greater than those of other students, a constitutional system must take that challenge into account. *See, e.g., Wyoming v. Campbell Co. School Dist.*, 19 P.3d 518, 545 (Wyo. 2001) ("[a]t-risk students require specially tailored programs and more time spent on all aspects of academic endeavor in order to improve their academic achievement"); *Abbott v. Burke*, 495 A.2d 376, 390 (N.J. 1985) (in a "thorough and efficient" system of public education, disadvantaged students must "be able to compete in, and contribute to, the society entered by the relatively advantaged children").

These cases demonstrate that a State high court can articulate meaningful standards for a constitutionally adequate education that are rigorous, enforceable, and applicable to all students, including those at risk. The cases from around the country also underscore that the Appellate Division's standard would put New York students at a disadvantage with their counterparts in this region and nationally. If it is constitutionally unacceptable in New Jersey, the New England states, South Carolina, and elsewhere to relegate substantial numbers of students

to low quality teaching, crowded classes in decrepit buildings, and old books and technology, what is the rationale for New York to hold otherwise?

2. Solid Research Supports a Comprehensive Remedy that Includes Reform as Well as Additional Funding.

The opinions of the Appellate Division Justices in this case betray a lack of confidence that it is feasible for a court to order relief that will successfully target the deficiencies in the present system for funding public education in New York. In various ways, the Justices express frustration that a court is limited to ordering more funding, since a complete solution requires administrative change as well as additional dollars. *See* 295 A.D.2d at 24, 744 N.Y.S.2d at 149. (Tom, J.P., concurring) ("State funding, itself, is not a magic bullet"); *id.* at 16, 744 N.Y.S.2d at 144 (Lerner, J.) ("more spending on education is not necessarily the answer"). Such concerns should not deter this Court from articulating an appropriate constitutional standard and requiring that the State comply. The Council does not believe this Court is limited to ordering unrestricted funding. As in Kentucky, the Court can order increased funding for reform measures that are proven to be effective.

The Council recently released an important study of urban school districts that have made significant gains in student achievement, titled: *Foundations for Success: Case Studies of How Urban School Systems Improve Student Achievement.*[16] The study analyzed three urban districts -- Sacramento,

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[16] "*Foundations for Success*" was authored by the Manpower Demonstration Research Corporation and funded with the assistance of the Office of Educational Research and Improvement of the United States Department of Education and the Ford Foundation. The full report is at www.cgcs.org/reports/Foundations.html.

Charlotte-Mecklenburg, and Houston -- that have boosted student outcomes significantly in recent years. *Foundations for Success* also includes a profile of the Chancellor's District in New York City, which is an administrative unit of the New York City Public Schools. Approximately 40 schools are part of the Chancellor's District, because they are low performing or are under "registration review" by the State. Schools in the Chancellor's District participate in an intensive school reform effort that includes:

- Smaller class sizes (20 students in K-3; 25 students in 4-8);
- Uniform and highly structured reading and mathematics programs;
- Extended blocks of time designated for reading and math instruction;
- On-site targeted staff development;
- Extended time before or after school for student learning and teacher training; and
- Ongoing assessment and evaluation of students.

Foundations for Success at 172. Schools are required to improve student achievement within three years or face State action. *Id.*

The interventions in the Chancellor's District schools require significant resources beyond the base ordinarily provided in New York City Public Schools. Each school has a team of at least five people who play a role in professional development. *Foundations for Success* at 174. The school day is longer

by 40 minutes and fewer students are assigned to each teacher, requiring additional staffing. *Id.* at 173-74. Schools are provided with *Success for All*, a reading program that requires the purchase of materials and extensive training of teachers. *Id.* at 173. Salary incentives are used to motivate highly qualified teachers to transfer to and stay in Chancellor's District schools. *Id.* at 48. Spending for Chancellor's District schools accordingly is approximately one-third higher than in regular New York City Public Schools at the same grade level. *Id.* at 41.

The Council's research on Houston, Charlotte-Mecklenburg, and Sacramento showed that they used many similar strategies to improve student achievement, including higher standards, specific goal setting for each school, accountability for meeting the goals, uniform and sometimes-prescriptive citywide curriculum, cohesive professional development, frequent monitoring of the reforms in the classroom, detailed data that were used regularly to assist students before they fell behind, and extra assistance for the lowest performing schools and students.

Foundations for Success explained that the additional funds in the Chancellor's District schools and other communities seeing improvement are not just there just for their own sake, but because they help support strategies and purchase programs and interventions proven to increase student achievement in troubled schools. Schools have succeeded in moving out of the Chancellor's District and off of the State registration review list, and overall trends in student achievement are positive. *Foundations for Success* at 176. State education officials

recognize that this type of effort, including the infusion of financial support, is needed in more New York City Schools. *See* Memorandum from James A. Kadamus to The Honorable the Members of the State Board of Regents, July 3, 2001 at 12. Efforts of the same type, sustained by leaders focused relentlessly on improvement and a requirement of accountability, have succeeded in Houston, Sacramento, and Charlotte-Mecklenburg.

Even with these supports, education reform takes time. As with any vitally important long-term effort, the time to begin is now. The conditions for reform in the New York City Public Schools are optimal. A new reform-minded Chancellor, with the support of the Mayor, is at the helm. This case has awakened an intense public awareness of and debate about the importance of public education to the future of New York City and State. The federal *No Child Left Behind Act of 2001* requires States and school districts to make steady progress toward student proficiency in reading, mathematics and science. New York's own graduation standards are more rigorous, beginning with the class that entered ninth grade in 2001, than they ever have been before.[17]

Public officials in New York have studied these issues repeatedly and have had the trial evidence before them for years. They clearly need the impetus

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[17] All general education students will be required to pass at least five Regents examinations with higher passing scores than previously required for a local diploma. In addition to the 20.5 credits previously required in specific subjects, students entering high school in 2001 and beyond must earn one more credit each in mathematics and science, as well as a foreign language credit. *See* General Education & Diploma Requirements at www.emsc.nysed.gov/part100/pages/diprequire.pdf (Sept. 2000).

provided by a Court Order to act. This Court should fulfill its responsibility to state the law and require compliance.

That is what has happened, with productive results, in the State of Maryland. In 1996, a Maryland state trial court held that the education provided to children in the Baltimore City Public Schools was not adequate to meet the requirements of the Maryland Constitution's education clause. *Bradford v. Maryland State Board of Education*, Case No. 95258055/CL20251 (Cir. Ct. Balt. City Oct. 18, 1996). The parties negotiated a consent decree that provided a new governance structure for the Baltimore City Public Schools, and funding for a series of programs as a start toward remedying the deficiencies in the adequacy of public education in Baltimore. When by 2000 the State of Maryland had not yet revamped its funding system to systemically provide adequate education for Baltimore City, the plaintiffs sought further relief in *Bradford*. The Court agreed, citing a report prepared by the Council, among other evidence, for the proposition that the overall resources available to the Baltimore City Public Schools were not adequate and, of equal importance, that funds had not been provided to support specific initiatives important to student success, including full-day kindergarten; extended learning opportunities; teacher and principal recruitment; professional development; classroom technology; and facilities improvement. The Circuit Court declared, on June 30, 2000, that the State had not yet brought itself into compliance with the Maryland Constitution, but concluded that it "trusts that the State will act to bring itself into compliance with its constitutional and contractual obligations under the

Consent Decree for the Fiscal Years 2001 and 2002 without the need for Plaintiffs to take further action." *Bradford v. Maryland State Board of Education*, Case No. 95258055/CL20251 (Cir. Ct. Balt. City Memorandum Opinion June 30, 2000) at 26.

The Governor of Maryland had by that time established a Commission on Education Finance, Equity, and Excellence, known as the "Thornton Commission" for its Chairman, Dr. Alvin Thornton of Howard University. The Thornton Commission gathered evidence and held hearings throughout the State. Its mission was a statewide effort to reform the system of school finance, consistent with the goal of resolving the remaining *Bradford* issues. It hired expert consultants to work with educators throughout Maryland to "cost out" the elements necessary to provide an adequate education. That analysis showed, using two different methods, that substantial additional funds were needed to support an adequate education in Maryland, particularly for poor and limited English proficient children. The Thornton Commission distributed those extensive reports and other data and documents on education finance throughout Maryland to inform the public debate over school funding.[18] The Commission's work, with the *Bradford* case in the background, brought the term "educational adequacy" into regular usage in Maryland homes and communities.

In response to the work of the Thornton Commission and the momentum it built for change, in April 2002, the Maryland General Assembly

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[18] The reports and other materials that the Thornton Commission generated are available at http://mlis.state.md.us/other/education/index.htm. The "costing out" studies and related materials are under "Adequacy Studies" on that page.

passed Senate Bill 856, an historic six-year, $1.3 billion school aid plan that includes specific educational mandates, such as expansion of full-day kindergarten and enhanced funding to serve poor and English Language Learner students. The legislation will benefit not only Baltimore City, but also all Maryland school districts with substantial numbers of at-risk students.

This Court should encourage such a solution in New York. Upon reversing the Appellate Division's low standard for a sound basic education in New York, and upholding the Supreme Court's original findings that the State system of school finance is a cause of the failure of thousands of New York City Public School students to attain a sound basic education, this Court should remand and require the Supreme Court to order that the defendants calculate the cost of providing a sound basic education. The Council's New York Study provides some preliminary analysis of the cost of an adequate education for students in New York City.[19] Like the Chancellor's District schools, New York City public schools in general should provide an intensive and cohesive curriculum, reasonable class sizes, enough instructional time to cover the material students need to master, extra staff to support development of the education professionals in the buildings, financial incentives for teachers to come to the schools and stay, and materials and programs in mathematics and reading that are sound and structured. There is no reason for the court on remand to be limited to ordering an increase in unrestricted funds for education in the New York City Public Schools.

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[19] Council's New York Study at 45-48.

CONCLUSION

The State of New York has been a leader in many aspects of public education. Its standards and accountability measures are considered among the best in the nation. New York has fallen short, however, in matching the funding of public schools with the mandate that schools improve and perform well for students. This Court can require that the public officials who have the responsibility for providing a sound basic education for "all children" do just that. The Court should require those officials, working with the plaintiffs, to calculate the real cost of providing the educational programs, services and facilities that students need to attain a sound basic education. New York State officials should then be given the opportunity to consider that information, and to adopt a system of funding public education designed to provide all students with the education they need. The Council stands ready to lend its experience and expertise to such a quest for a solution.

Respectfully submitted,

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By _____

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